IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP NO. 164 of 2006

Reserved on : 18th June, 2007
Date of Decision: 21st June, 2007

H.P.State Electricity Board and others	Petitioners
Versus	
Kushal Singh and another	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the petitioner : Mr. Shrawan Dogra, Advocate.

For respondent No.1: Mr. Dushyant Dadhwal, Advocate.

Sanjay Karol, J.

Petitioners have assailed the award dated 26.10.2005 passed by H.P. Industrial Tribunal cum Labour Court, Dharamshala, District Kangra, H.P. in Reference No. 487/2004, titled as Kushal Singh v. H.P. State Electricity Board and others, whereby the claim petition of respondent-employee was allowed.

Respondent-employee was employed with petitioners on 20.2.1985 as daily waged Beldar upto 25.9.1986 when his services were allegedly terminated. According to learned counsel for petitioners, there is a dispute with regard to number of days, respondent-employee has worked for. According to him, the finding of the Tribunal that notice under Section 14(2) of the Standing Orders framed under the Industrial Employment Standing Orders Act, 1946 was required to be given is incorrect.

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

Notification exempting the petitioner-Board from the applicability of all the provisions of the Act is reproduced:-

> "EXEMPTION FROM THE PROVISIONS OF THE ACT
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> (Issued and published in Hindi in RHP dated 22.8.92 p. 1180)
> Shimla 2, the 11th September, 1985.
>
> No.12-5/85-Shram.- In exercise of the powers conferred by him under section 14 of the Industrial Employment (Standing Orders) Act, 1946 (Act No. XX 1946), the Governor, Himachal Pradesh is pleased to exempt the establishment of Himachal Pradesh State Electricity Board from all the provisions of the said Act."

Thus, it is clear that termination of the respondent is prior to the publication of the Notification and notice as such was required to be given. Therefore, I find no infirmity with this part of the award.

There is a finding on record that claim of the respondent-employee is not stale. The claim of the respondent-employee is not barred due to delay and laches has been found to be correct by the Tribunal. I am in agreement with the same.

Learned counsel for the petitioners further submits that respondent-employee has been directed to be reinstated with full back wages. He submits that since the claim of the respondent-employee is highly belated, therefore, the Tribunal ought to have considered the same before passing any direction with regard to back wages as also seniority and continuation in service. According to learned counsel for the petitioners no reasoning has been given in awarding back wages.

Having perused the award, I find favour with the submission of learned counsel for the petitioners that the issue of delay and laches for the purposes of determination of back wages, seniority and continuation in service has not been considered at all. Therefore, without disturbing the

finding of the Tribunal, the matter is remanded back to the Tribunal on this limited issue.

During the course of hearing, it was further argued that there is material on record to show that respondent-employee had completed 240 days of service and was in any event entitled for notice under Section 25-F of the Act and that juniors have been retained and new persons have been employed after termination in violation of Section 25-G and 25-H of the Act. According to the learned counsel for the petitioners, it is disputed question, which cannot be gone into by this Court.

It would be open for the parties to place on record additional material in support of their claims without unnecessarily delaying the matter. The Tribunal is directed to decide the matter, after affording opportunity of hearing within a period of 16 weeks from today.

Further, it would be open for the respondent – employee to independently take up the matter with the concerned authority who shall, keeping in view the averments made by him in the claim petition, sympathetically consider re-engagement of the respondent-employee in accordance with law.

No other point was raised or urged by the learned counsel for the parties.

With the above observations and directions, the writ petition is disposed of. All the Misc. applications are also disposed of.

Records of the case, if any, be sent back immediately and forthwith.

21st June, 2007
(C)

(Sanjay Karol),
Judge